

AMENDED IN SENATE APRIL 29, 2010

SENATE BILL

No. 1285

Introduced by Senator Steinberg

February 19, 2010

An act to amend Section ~~51~~ 52.5 of the Civil Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 1285, as amended, Steinberg. ~~Unruh Civil Rights Act. Human trafficking.~~

Existing law permits a victim of human trafficking to bring a civil action for actual damages and provides for an award of punitive damages, as provided, upon proof of the defendant's malice, oppression, fraud, or duress in committing the act of trafficking.

This bill would instead provide that punitive damages may be awarded upon clear and convincing evidence of the defendant's malice, oppression, fraud, or duress in committing the act of trafficking.

~~The Unruh Civil Rights Act generally prohibits business establishments from discriminating on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 52.5 of the Civil Code is amended to read:

1 52.5. (a) A victim of human trafficking, as defined in Section
2 236.1 of the Penal Code, may bring a civil action for actual
3 damages, compensatory damages, punitive damages, injunctive
4 relief, any combination of those, or any other appropriate relief.
5 A prevailing plaintiff may also be awarded attorney's fees and
6 costs.

7 (b) In addition to the remedies specified herein, in any action
8 under subdivision (a), the plaintiff may be awarded up to three
9 times his or her actual damages or ten thousand dollars (\$10,000),
10 whichever is greater. In addition, punitive damages may also be
11 awarded upon ~~proof~~ *clear and convincing evidence* of the
12 defendant's malice, oppression, fraud, or duress in committing the
13 act of human trafficking.

14 (c) An action brought pursuant to this section shall be
15 commenced within five years of the date on which the trafficking
16 victim was freed from the trafficking situation, or if the victim was
17 a minor when the act of human trafficking against the victim
18 occurred, within eight years after the date the plaintiff attains the
19 age of majority.

20 (d) If a person entitled to sue is under a disability at the time
21 the cause of action accrues, so that it is impossible or impracticable
22 for him or her to bring an action, then the time of the disability is
23 not part of the time limited for the commencement of the action.
24 Disability will toll the running of the statute of limitation for this
25 action.

26 (1) Disability includes being a minor, insanity, imprisonment,
27 or other incapacity or incompetence.

28 (2) The statute of limitations shall not run against an incompetent
29 or minor plaintiff simply because a guardian ad litem has been
30 appointed. A guardian ad litem's failure to bring a plaintiff's action
31 within the applicable limitation period will not prejudice the
32 plaintiff's right to do so after his or her disability ceases.

33 (3) A defendant is estopped to assert a defense of the statute of
34 limitations when the expiration of the statute is due to conduct by
35 the defendant inducing the plaintiff to delay the filing of the action,
36 or due to threats made by the defendant causing duress upon the
37 plaintiff.

38 (4) The suspension of the statute of limitations due to disability,
39 lack of knowledge, or estoppel applies to all other related claims
40 arising out of the trafficking situation.

1 (5) The running of the statute of limitations is postponed during
2 the pendency of any criminal proceedings against the victim.

3 (e) The running of the statute of limitations may be suspended
4 where a person entitled to sue could not have reasonably discovered
5 the cause of action due to circumstances resulting from the
6 trafficking situation, such as psychological trauma, cultural and
7 linguistic isolation, and the inability to access services.

8 (f) A prevailing plaintiff may also be awarded reasonable
9 attorney's fees and litigation costs including, but not limited to,
10 expert witness fees and expenses as part of the costs.

11 (g) Any restitution paid by the defendant to the victim shall be
12 credited against any judgment, award, or settlement obtained
13 pursuant to this section. Any judgment, award, or settlement
14 obtained pursuant to an action under this section shall be subject
15 to the provisions of Section 13963 of the Government Code.

16 (h) Any civil action filed under this section shall be stayed
17 during the pendency of any criminal action arising out of the same
18 occurrence in which the claimant is the victim. As used in this
19 section, a "criminal action" includes investigation and prosecution,
20 and is pending until a final adjudication in the trial court, or
21 dismissal.

22 ~~SECTION 1. Section 51 of the Civil Code is amended to read:~~

23 ~~51. (a) This section shall be known, and may be cited, as the~~
24 ~~Unruh Civil Rights Act.~~

25 ~~(b) All persons within the jurisdiction of this state are free and~~
26 ~~equal, and no matter what their sex, race, color, religion, ancestry,~~
27 ~~national origin, disability, medical condition, marital status, or~~
28 ~~sexual orientation are entitled to the full and equal~~
29 ~~accommodations, advantages, facilities, privileges, or services in~~
30 ~~all business establishments of every kind whatsoever.~~

31 ~~(c) This section shall not be construed to confer any right or~~
32 ~~privilege on a person that is conditioned or limited by law or that~~
33 ~~is applicable alike to persons of every sex, color, race, religion,~~
34 ~~ancestry, national origin, disability, medical condition, marital~~
35 ~~status, or sexual orientation.~~

36 ~~(d) Nothing in this section shall be construed to require any~~
37 ~~construction, alteration, repair, structural or otherwise, or~~
38 ~~modification of any sort whatsoever, beyond that construction,~~
39 ~~alteration, repair, or modification that is otherwise required by~~
40 ~~other provisions of law, to any new or existing establishment,~~

1 facility, building, improvement, or any other structure, nor shall
2 anything in this section be construed to augment, restrict, or alter
3 in any way the authority of the State Architect to require
4 construction, alteration, repair, or modifications that the State
5 Architect otherwise possesses pursuant to other laws.

6 (e) For purposes of this section:

7 (1) “Disability” means any mental or physical disability as
8 defined in Sections 12926 and 12926.1 of the Government Code.

9 (2) “Medical condition” has the same meaning as defined in
10 subdivision (h) of Section 12926 of the Government Code.

11 (3) “Religion” includes all aspects of religious belief,
12 observance, and practice.

13 (4) “Sex” has the same meaning as defined in subdivision (p)
14 of Section 12926 of the Government Code.

15 (5) “Sex, race, color, religion, ancestry, national origin,
16 disability, medical condition, marital status, or sexual orientation”
17 includes a perception that the person has any particular
18 characteristic or characteristics within the listed categories or that
19 the person is associated with a person who has, or is perceived to
20 have, any particular characteristic or characteristics within the
21 listed categories.

22 (6) “Sexual orientation” has the same meaning as defined in
23 subdivision (q) of Section 12926 of the Government Code.

24 (f) A violation of the right of any person under the Americans
25 with Disabilities Act of 1990 (Public Law 101-336) shall also
26 constitute a violation of this section.